

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

APRIL TERM, 1920.

No. 3380 **647**

WALTER O. SNELLING, APPELLANT,

vs.

JAMES T. NEWTON, COMMISSIONER OF PATENTS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MARCH 25, 1920.

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Court of Appeals of the District of Columbia.

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APPELLEE.

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Court of Appeals of the District of Columbia.

No. 3380.

WALTER O. SNELLING, Appellant,

vs.

JAMES T. NEWTON, Commissioner of Patents.

a Supreme Court of the District of Columbia.

In Equity. No. 37348.

WALTER O. SNELLING, Plaintiff,

vs.

JAMES T. NEWTON, as Commissioner of Patents, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed November 17, 1919.

In the Supreme Court of the District of Columbia.

In Equity. No. 37348.

WALTER O. SNELLING, Plaintiff,

vs.

JAMES T. NEWTON, as Commissioner of Patents, Defendant.

To the Supreme Court of the District of Columbia:

Plaintiff states as follows:

1. The plaintiff, Walter O. Snelling, is a citizen of the United States and of the State of Pennsylvania, residing at number six

hundred and nine North Seventh Street, Allentown, in said State, and brings this suit in his own right.

2. The defendant, James T. Newton, is likewise a citizen of the United States, residing in the City of Washington in the District of Columbia, and is sued herein for acts done and threatened to be done by him under alleged authority of law assumed to have been conferred upon and possessed by him by virtue of office and his capacity as Commissioner of Patents.

3. Plaintiff is a research chemist by profession and present occupation and has made extensive investigations and many valuable discoveries in matters pertaining to the production of explosives and motor fuels including the more efficient and economical extraction of gasoline and the lighter hydrocarbons from crude or heavy

2 Petroleums, and in the course of such investigations as the result thereof and of the novel and useful discoveries so made has from time to time made applications in form as prescribed and required by the laws of the United States for grants of letters patent of the United States, certain of which applications, embodying new and useful discoveries and inventions pertaining to the extraction of gasoline from heavy petroleum hydrocarbons are still pending in the United States Patent Office. As such inventor and applicant plaintiff is possessed of a special and peculiar interest in the subject matter of this suit, beyond that pertaining to or possessed by the public and its component members in general, as will presently hereinafter appear.

4. From July 1, 1907 until about September 1, 1912, plaintiff was in the employ of the United States Department of the Interior and during a portion of such period was in charge of what is termed the Explosives Chemical Laboratory of the United States Bureau of Mines at Pittsburgh, Pennsylvania.

While so employed, during the year 1911 in his own time outside of the hours of office employment, plaintiff while experimenting with heavy oils discovered the fact that when oil vapors were heated under pressures in the absence of liquid oil, there occurred changes which resulted in the production of enhanced quantities of gasolines and light hydrocarbons and shortly after making his first successful experiments in such connection, plaintiff informed Joseph A. Holmes, then the Director of the Bureau of Mines of the results which he had obtained.

Thereafter and from time to time during the year 1912 and the fore part of the year 1913, plaintiff as diligently as circumstances permitted continued his investigations and experiments in the above indicated field with such success that on the 19th day of May, 1913, plaintiff duly filed in the United States Patent Office an application serial No. 768,618 for letters patent covering his process of cracking oils in a state of vapor under pressure and in the absence of liquid oil, which said application for patent is still pending and undisposed of. During much of the time since said last mentioned date, plaintiff has been diligently engaged in the investigation of refining processes for the better utilization of the hydrocarbons produced by his said process.

5. On or about September 1, 1912, plaintiff resigned his position in the Bureau of Mines and has not been since officially or otherwise connected therewith.

6. By the Act of Congress of March 3, 1883, Chapter 143, (22 Stats. L. 625), it is provided that—

“The Secretary of the Interior and the Commissioner of Patents are authorized to grant any officer of the Government, except officers and employes of the Patent Office, a patent for any invention of the classes mentioned in section four thousand eight hundred and eighty-six (4,886) of the Revised Statutes, when such invention is used or to be used in the public service, without the payment of any fee, provided, that the applicant in his application shall state that the invention described therein, if patented, may be used by the Government, or any of its officers or employes, in prosecution of work for the Government, or by any other person in the United States, without the payment to him of any royalty thereon, which stipulation shall be included in the patent.”

7. On the 1st day of March, 1915, Walter F. Rittman, being then and now an employe of the United States Bureau of Mines filed in the United States Patent Office an application for letters patent of the United States “for the improvement in the manufacture of gasoline from heavy petroleum hydrocarbons,” as set forth in the specifications annexed thereto, the first paragraph of said specifications reading as follows:

“This application is made under the act of March 3, 1883, c. 143 (22 Stats. L. 625) and the invention described therein may be used by the Government, or by any of its officers or employes in prosecution of work for the Government, or by any person in the United States without payment of any royalty thereon.”

Plaintiff is informed and believes and therefore states that said application of Walter F. Rittman for letters patent of the United States and the specifications pertaining thereto was prepared by one, Clarence B. Dutton, then law examiner of the United States Bureau of Mines; that same was delivered to and received in and by the United States Patent Office on said 1st day of March, 1915, as a complete application and was given the official serial number 11398, no filing fee such as commonly required by law to be paid being in this instance demanded or received by reason of the dedication to the public of the invention described and claimed in and by said application and accompanying specifications. Said application was officially endorsed by the United States Patent Office—“First fee cash none required, Act of March 3, 1883,” also “final fee cash none required,” such endorsements constituting full evidence of the fact that the applicant’s dedication of his supposed invention to the public had been accepted by the Commissioner of Patents acting pursuant to the provisions of law for the benefit of said public, and thereafter on or about the 13th day of March, 1915, official action by the primary examiner was taken on said application in the due and ordinary course of official business.

That as further evidencing the acceptance of applicant’s dedication to the public of his supposed invention, there was

spread upon the records of proceedings in the House of Representatives on March 1, 1915, such action being taken in connection with the inclusion in the then pending Sundry Civil Bill of an appropriation of the sum of \$35,000, "for inquiries and investigations, concerning the mining, preparation, treatment, and utilization of petroleum and natural gas," etc., etc., a certain statement dated the 27th day of February, declaring that:

"Secretary of the Interior Lane today announced the discovery by the United States Bureau of Mines of two chemical processes, one of which, it is claimed, will be of tremendous importance to the oil industry, greatly increasing the supply of gasoline, while the other may make the United States absolutely independent of the rest of the world in regard to important materials necessary for the dye industry and the manufacture of high explosives used in warfare and in engineering operations. * * *

"The discoverer of these two valuable processes, after many years of research, is Dr. Walter F. Rittman, chemical engineer of the Bureau of Mines, the work having been done at Columbia University, New York, the facilities of the laboratory there having been turned over to the Federal Government by President Nicholas Murray Butler.

"Application has been made by Dr. Rittman, on behalf of the Federal Government, to patent these processes in order to prevent any monopoly in their use, the patents to be dedicated to the whole American people.

"These processes, said Secretary Lane today, 'are fraught with the utmost importance to the people of this country. For some time the Standard Oil Co. through the great amount of money at its command, through its employment of expert chemists, and through its extensive organization, has had a big advantage over the independents in the production of gasoline, this company having a patented process that obtains for it as much as three times the amount of gasoline from a given quantity of petroleum as the independents now obtain. There are two or three other large corporations that have an efficient process for the manufacture of gasoline, but the independents, as a whole, have never been able even to approach the results obtained by the Standard Oil Co. Now the Federal Government, through the efforts of Dr. Rittman, proposes

to make free for the use of all of the people of this country who wish it a process that is confidently expected to increase their yields of gasoline from crude petroleum fully 200 per cent, and perhaps more, such results having repeatedly been obtained in the laboratory."

Thereafter the Congress of the United States made further appropriations of large sums of public money to be used in the development of the processes described in the application for letters patent of said Doctor Walter F. Rittman, both on an experimental and on a commercial scale.

Thereafter from the date of the filing of the said application of Doctor Walter F. Rittman for letters patent covering his alleged invention so dedicated to the public and continuing for many months, the process of making gasoline and other light hydrocarbons de-

scribed in the said application was given wide publicity by the United States Bureau of Mines and by the Secretary of the Interior of the United States, by means of interviews and newspaper articles published in hundreds of newspapers and periodicals throughout the United States, wherein the said process, under the name of the "Rittman Process" was announced and described as an improvement of vast importance in the manufacture of gasoline, benzene, toluene and other hydrocarbon substances. That the said announcements and articles, so published throughout the United States at the instance of the Bureau of Mines and of the Secretary of the Interior, included the announcement, or promise, that the said process, with all future improvements and new devices based thereon, having been freely dedicated to the public of the United States, would forever belong wholly to the public and could be used by anyone in the United States without payment of royalty.

9. Notwithstanding the dedication so made and the publicity given thereto by officials of the Department of the Interior and others, on or about the 15th day of March, A. D. 1915, the Honorable Van H. Manning, Acting Director of the Bureau of Mines in the Department of the Interior, addressed to the Honorable Thomas Ewing, then Commissioner of Patents, a letter referring to the above application of Doctor Walter F. Rittman for letters patent of the United States, which communication is in the following words and figures, to wit:

"Refer to OO 15, Received Mar. 15, 1915. H. Clerk U. S. Patent Office.

Office of the Director,
Department of the Interior,
Bureau of Mines,
Washington.

March 15, 1915.

Hon. Thomas Ewing,
Commissioner of Patents,
Washington, D. C.

DEAR SIR:

On behalf of Doctor W. F. Rittman, a chemical engineer in the employ of the Bureau of Mines, and of the Bureau of Mines as well, I transmit, herewith fifteen (\$15) dollars in payment of filing charges on Patent Office Application No. 11,398, the same being an application for patent for improvements in the manufacture of gasoline from petroleum hydrocarbons.

The application as filed proposes to dedicate the process described therein to the public without payment of royalty. After full consideration it has been decided, in order that the people of the United States may derive the fullest measure of benefit from the invention of Doctor Rittman, to amend the specifications by striking out the

dedicating clause, and to execute as promptly as possible, a trust deed assigning all interests in the patent as applied for to the Secretary of the Interior as trustee, supplementing such deed with a trust agreement setting out the general manner in which the trust shall be executed. It is felt that by so-doing, monopolization of the patent for the benefit of any special interest can be prevented and the fullest advantages realized by the general public.

Very truly yours,

VAN H. MANNING,
Acting Director."

Said communication was received in the United States Patent Office on the 15th day of March, 1915, and upon receipt thereof, the then Commissioner of Patents without authority of law or other lawful authority so to do erased or permitted to be erased from the file wrapper and contents pertaining to said application of Walter F. Rittman, the notations to effect that no fees were either paid or required by virtue of said Act of March 3, 1883, and noted thereon the following—"first fee cash, \$15.00, March 15, 1915" and also altered or permitted to be altered the notation on said file wrapper reading "appl. filed complete, Mar. 1, 1915" so as to cause or permit the same to read "appl. filed complete, Mar. 15, 1915".

Complainant avers that neither the Acting Director of the Bureau of Mines nor the then Commissioner of Patents was possessed of authority to in any such wise alter the status of the application, serial No. 11,398, either with or without the acquiescence of said applicant. Thereafter, on or about the 7th day of April, 1915, said applicant, Walter F. Rittman, executed a power of attorney appointing said C. B. Dutton his attorney to prosecute said application for letters patent and such power of attorney was on the 12th day of April, 1915,

received and made of record in the United States Patent Office.

Other than as above indicated, said application serial No. 11,398 either as originally filed or as subsequently altered was not further acted upon by the Commissioner of Patents or any of his subordinate officials, lawfully authorized thereunto, nor by or on the part of the applicant, Doctor Walter F. Rittman, or of his said attorney, C. B. Dutton, for or during the period of one year at the expiration of which time said application was stamped "abandoned" and transferred to the file of "abandoned applications" where it still remains.

10. Notwithstanding the abandonment by the Applicant, Walter F. Rittman, of his said application serial No. 11,398, and of the express dedication to the public by the applicant of the supposed invention therein disclosed, and notwithstanding the wide public credit which had been given to him because of such dedication in published announcements as above, the said Walter F. Rittman on May 18, 1915 filed in his own name and for his own benefit in the United States Patent Office a further application for letters patent of the United States serial No. of which is 29,020, which application and its accompanying specifications and claims is identical in all

material respects with the subject matter of said earlier and original application serial No. 11,398, with the exception that the later application and specifications contain no dedication whatever of the supposed invention thereby disclosed to the public nor to any officer of the United States Government in trust for the Public of the United States but said application was filed as an ordinary privately owned application under the provisions of Section 4886 of the Revised Statutes of the United States and was accompanied by the first filing fee of \$15.00 as prescribed by law, which fee was paid by said applicant. No assignment of the supposed invention disclosed in and by said application serial No. 29,020 otherwise than as heretofore stated appears in or on the assignment records of the United States Patent Office, and said application serial No. 29,020 has since the date of filing been actively prosecuted by the said applicant for his own use and benefit.

Both the above mentioned and so styled abandoned application serial No. 11398, which application contained an express dedication by the applicant to the public of the United States of the supposed invention therein described and claimed, and the subsequent application serial No. 29020, which contained no dedication, express or otherwise, to the public of the United States, disclose not only identical steps of a process for the extraction of gasoline from heavy petroleums, of which process said applicant Walter F. Rittman claimed to be the first discoverer, but also described the certain apparatus claimed to be essential to the performance of the various steps of said process.

11. On or about the 29th day of March, 1916, more than ten (10) months after said applicant Walter F. Rittman had filed said application serial No. 29020, for letters patent covering said improved process for the better extraction of gasolines from heavy petroleums and machinery essential thereto, and about two weeks after the expiration of the period of time prescribed by law whereby said application serial No. 11398 was declared by the Commissioner of Patents to have become "abandoned" and had been so noted upon

the files and records of the Patent Office, said applicant 11 Walter F. Rittman executed a certain instrument in writing, which referring to his then pending application serial No. 29020, but making no reference whatever to his earlier and then officially styled "abandoned" application serial No. 11398, though both with respect to the specifications of the alleged inventions and claims thereof were substantially identical, the two applications materially differing only in the circumstance that the earlier application contained the express and unlimited dedication to the public of the supposed inventions in both described and claimed, purported to "sell", assign, and transfer to Franklin Lane, Secretary of the Interior, and his successors in office, as trustee or trustees in trust for the use and benefit of the people of the United States, all his right, title, and interest in and to the invention described and claimed in said application serial No. 29020, with certain exceptions as therein specified, among others that said assignment should not permit the use of said inventions "for the treatment of hydrocarbon

materials imported into the United States", particularly reserving to himself, his heirs, legal representatives *and assigns* (sic) the right to use the invention described in said application without liability in any manner whatsoever on his part, or on the part of his heirs, legal representatives or assigns, for infringement of any letters patent which might be granted on said application, and with the reserved right in said Rittman, his heirs, legal representatives, and assigns, "to bring suit in the name of the trustee for infringement of patent(s) granted on said application(s) * * * against

12 any party or parties employing the inventions described in said application(s) in the treatment of hydrocarbon materials imported into the United States," the entire so-called sale and transfer to said Franklin K. Lane, Secretary of the Interior, and his successors in office, being conditioned as follows, to wit—

"In case the said Franklin K. Lane, or his successors in office, is not empowered to execute the trust herein provided, and the same shall lapse for lack of authority so to execute, this assignment shall become null and void, and the entire right, title, and interest in and to the inventions described in said applications shall vest in the said Walter F. Rittman, his heirs, legal representatives, and assigns."

12. Under date of April 21, 1916, said Franklin K. Lane, Secretary of the Interior, forwarded to the Honorable Ollie M. James, Chairman of the Senate Committee on Patents, United States Senate, a draft of a proposed joint resolution, which the Department of Interior desired to have passed "for the purpose of vesting in the Secretary of the Interior, as trustee for the people of the United States, all rights and interest in any patent(s) which may be secured by Doctor Walter F. Rittman under application(s) * * * No. 29020, for patents for certain improvements in the manufacture of gasoline, etc., etc., saying that

"If Congress is willing, through the joint resolution referred to, to authorize the Secretary of the Interior to accept this assignment of the Rittman processes patents, the public welfare can be adequately protected through a condition imposed upon licenses of processes" * * * and that, "unless the authority asked for in this resolution is given to the Secretary of the Interior, he cannot accept the assignment of the Rittman patent rights, and these rights may revert to Doctor Rittman or to the private parties or corporations to whom he may assign them."

The joint resolution in question is spread at large upon the record of proceedings in the Senate of the United States, (see Congressional Record, May 1, 1916, at page 8110), and after the

13 customary parliamentary procedure was adopted and passed without amendment, but same was not and has not been adopted or passed in the House of Representatives, and so has failed of final passage, and the authority proposed thereby has not been conferred upon said Franklin K. Lane, as Secretary of the Interior, and the entire right and interest, if any in said alleged inventions as disclosed and claimed in said application serial No. 29020, remains with said Walter F. Rittman and his assigns.

13. Plaintiff is informed and believes and therefore avers that

either directly and alone or both directly and indirectly in conjunction with others and through assignees said Walter F. Rittman, notwithstanding his express and unqualified dedication to the public of the United States of all of his title and interest, if any, in said alleged discovery and invention, described and claimed in and by said applications for patent Serial Nos. 11398 and 29020, has engaged and is still engaging in the commercial exploitation of the alleged invention therein described, asserting *this* right and ability so to do as the original inventor and the owner of all rights of user and sale therein, and has realized and is realizing for his own benefit and profit considerable sums of money by way of license fees or royalties for the grant of licenses to make use thereof, and notwithstanding the express dedication of the public above referred to threatens to institute appropriate actions for damages against all who shall venture to make use thereof without first being so licensed to do.

14. On the 19th day of May, 1913, as above stated, and on the 20th day of November, 1916, this plaintiff duly filed in the
14 United States Patent Office applications for letters patent of the United States which applications respectively are serially numbered 768618 and 132296, and both applications so filed have been adjudged by the Commissioner of Patents or his Official Subordinates in the Patent Office to contain subject matter in common with said application, serial No. 29020 of said Walter F. Rittman, and interferences have been declared between them so that their various common claims, and like claims set forth in pending applications filed by others, have been and are now undergoing hearing before the Examiner of Interferences and the Commissioner of Patents, in what is officially known in said Patent Office as Interference No. 39785 and the said applicant Walter F. Rittman, has so prosecuted his said application, that upon motions made in such behalf the Commissioner of Patents has held and decided (Official Gazette No. 2, Vol. 261; April 29, 1919, p. 412) that

"In order to make a dedication under this *state*, (Act March 3, 1883, ch. 122; 22 Stats. 625), the Act of dedication must be complete—that is, Rittman must offer to dedicate and the Government must accept the offer by granting him a patent; * * * the act of dedication—that is, the proffer on the part of Rittman and the acceptance on the part of the Government—had never been completed. Under these circumstances no reason is seen why Rittman could not withdraw his offer of dedication or modify its terms. He did modify its terms when he filed his second application by paying the usual first fee. The dedication to the public has not yet been completed and will not be until accepted by grant of a patent to Rittman."

As the result of such conclusion and as an integral part of such decision, said applicant Walter F. Rittman has been accorded an unconscionable benefit and advantage which he sought in said interference proceedings, viz. the benefit of the filing date of his original
15 and dedicated application, serial No. 11398, although the same, for the very purpose of avoiding, if possible, the effect

of the express dedication to the public therein contained, was abandoned instead of being prosecuted to patent, such accorded benefit being contrary to the long established practice of the United States Patent Office and contrary to the clear intent and purpose of the laws of the United States applicable thereto.

15. Plaintiff is informed and believes and therefore avers that the practical and direct effect of such ruling of defendant James T. Newton, as Commissioner of Patents, is to annul the express dedication to the public of all rights, if any, in and to the alleged discovery and invention described and claimed by said Walter F. Rittman in and by his application for patent serial No. 11,398, which alleged discovery and invention so described and claimed coincides in every material respect with the alleged discovery and invention described and claimed in Rittman's said application serial No. 29,020, which latter application has been adjudged by the Commissioner of Patents, as aforesaid to contain subject matter in common with that contained in plaintiff's pending applications for patent above identified by the respective serial numbers.

16. Plaintiff is advised and believes and therefore avers that no appeal from the decision and order of the Commissioner of Patents based thereon, will lie under existing law, as construed and applied in pertinent and controlling decisions, either now or hereafter to the Court of Appeals of the District of Columbia or to any other Court of intermediate or last resort possessed of jurisdiction to hear and determine the point directly involved in the decision and order com-

plained of; that the damage which will be inflicted upon the public of the United States in general and upon plaintiff individually by the continuance of said order in force cannot be readily or reasonably reckoned in terms of dollars and cents; that the wrong and damages inflicted upon plaintiff, if said order be continued in force will be irreparable, and plaintiff is without any adequate remedy at law for the redress thereof, and the public of the United States in general will be damaged without redress at law, to the extent of the several appropriations of public moneys which have been made from time to time to enable the Department of the Interior through its Bureau of Mines to prosecute through its employe, Walter F. Rittman, the investigations which led up to the alleged discovery and invention in said applications for patent, serially numbered 11,398 and 29,020 described and claimed.

17. Plaintiff on information and belief avers that said Walter F. Rittman is not a resident of the District of Columbia but is a resident of some jurisdiction foreign thereto, and because of inability to make service of process upon him, said Walter F. Rittman has not been made a party defendant herein.

18. Wherefore, the premises considered, plaintiff says,

1. That the name of the defendant herein is James T. Newton, who resides at 1625 R Street in the City of Washington, District of Columbia, and is sued herein in his official capacity as Commissioner of Patents, having his office in the United States Patent Office, in the city of Washington, District of Columbia.

17 2. Plaintiff prays that subpoena may be issued out of this honorable Court addressed to the Honorable James T. Newton, as Commissioner of Patents, commanding him to appear herein and answer the exigencies of this bill of complaint.

3. That a rule to show cause may be immediately issued and served upon said James T. Newton, as Commissioner of Patents, commanding him to appear in this Court on or before a day therein to be named and to show cause why he should not be restrained by the mandatory and injunctive processes of this Court from proceeding further in the hearing of said Interference Proceeding No. 39,785, in accordance with the decision and order of said Commissioner of Patents entered therein and particularly described in the body of the foregoing bill of complaint.

4. That upon final hearing, this Honorable Court will by its appropriate processes in the nature of a mandatory injunction, command and require said defendant, James T. Newton, Commissioner of Patents, to strike from the files pertaining to said Interference Proceeding No. 39,785 the order in the foregoing bill of complaint referred to and described, and to discontinue further proceedings in connection with said Interference Proceeding No. 39,785, and to reject without further hearing said Walter F. Rittman's application for patent, serial No. 29,020.

5. And for such other and further relief in the premises as may be just and to this Honorable Court may seem appropriate and right.

WALTER O. SNELLING.

McKENNEY & FLANNERY,
Attorneys for Plaintiff.

18 DISTRICT OF COLUMBIA, ss:

I, F. D. McKenney, of the city of Washington, District of Columbia, on oath state that I am an attorney of the Supreme Court of the District of Columbia, and appear on behalf of the plaintiff, Walter O. Snelling, as attorney in the above and annexed proceeding; that the said Walter O. Snelling is a resident of Allentown, of the State of Pennsylvania, and is not at this time in the District of Columbia or within immediate communication thereof; that I have been authorized by said Walter O. Snelling, both to sign his name to the foregoing bill of complaint and as his agent or attorney to make oath thereto.

I do further say that I am well acquainted with the contents of the foregoing bill of complaint and that the statements therein contained are based upon statements made to me personally by the plaintiff, Walter O. Snelling, and upon documents in my possession furnished to me by said Snelling, or under his direction, and said statements to the best of my knowledge, information and belief are true.

F. D. McKENNEY.

Subscribed and sworn to before me this 17th day of November, A. D. 1919.

J. R. YOUNG, *Clk.*
By F. E. CUNNINGHAM,
Ass't. Clk.

Rule to Show Cause.

Filed November 17, 1919.

* * * * *

Upon consideration of the bill of complaint filed in the above entitled cause, it is this 17th day of November, 1919, adjudged and ordered that the defendant, James T. Newton, as Commissioner of Patents, do show cause herein on the 21st day of November, 1919, why a writ of mandatory injunction should not be issued out of this Court addressed to and commanding him as prayed in said bill of complaint.

WALTER I. McCOY,
Chief Justice.

Marshal's Return.

Served a copy of the within rule on James T. Newton, Com. of Patents personally: Nov. 17, 1919.

MAURICE SPLAIN,
U. S. Marshal.

Return to the Rule to Show Cause.

Filed November 21, 1919.

* * * * *

The defendant, James T. Newton, Commissioner of Patents, for reasons why the preliminary writ of injunction should not be granted but not as answer to the Bill of Complaint, shows to the Court as follows:

20 1, 2. Defendant admits the allegations in paragraphs 1 and 2 of the Bill of Complaint.

3, 4, 5. Defendant has no knowledge as to the allegations of paragraphs 3, 4 and 5 of the Bill of Complaint other than that the plaintiff filed in the United States Patent Office on May 19, 1913, an application for letters patent which was given serial No. 768,618.

6. Paragraph 6 merely quotes the statute.

7, 8, 9, 10, 11 and 12. Defendant admits the allegations of paragraphs numbered 7, 8, 9, 10, 11 and 12 in so far as they refer to the filing in the United States Patent Office of two applications for patent by one Walter F. Rittman, the first of which was filed originally on March 1, 1915, and the second on May 18, 1915.

Defendant has no knowledge whether large sums of money were expended by the Interior Department in developing the processes devised by Walter F. Rittman, but is informed and believes that no money was so expended by the Interior Department except that Rittman was detailed for a portion of his time to assist in developing this process and avers upon information and belief that the said Rittman

had many other duties to perform for the Bureau of Mines during the time he was in charge of this investigation. Defendant further denies on information and belief that the Congress made appropriations for the development of the process as alleged in paragraph 8 of the Bill of Complaint.

Defendant admits that a letter was written by the then Acting Director of the Bureau of Mines as quoted in paragraph 9, but defendant avers that the letter was written in view of a letter from the Secretary of the Interior to the Commissioner of Patents and
21 a letter from the Commissioner of Patents to the Assistant Director of the Bureau of Mines, which letters are in the following words and figures, to wit:

Mar. 5, 1915.

Hon. Thomas Ewing,
Commissioner of Patents,
Washington, D. C.

MY DEAR MR. EWING:

I feel that the patent applications filed by Dr. W. F. Rittman of the Bureau of Mines, which he purposes to dedicate to the public, are of such value to the petroleum refining and textile industries as to call for some control being exercised over their use by all private concerns. It occurs to me that this can best be done by having the patents taken out in the name of the Secretary of the Interior as trustee for the public.

Will you please advise me promptly whether, if the specifications are amended in accordance with the above idea, the statutory fees will have to be paid, and, if so, the total amount of such fees. It is my idea that if the patents can be so issued it will be possible to so regulate the use as to promote the best interests of the public at large.

Cordially yours,

FRANKLIN K. LANE.

March 15, 1919.

Mr. Van. H. Manning,
Assistant Director,
Bureau of Mines.

DEAR MR. MANNING:

I think the filing fees on the Rittman applications should be paid and paid at once.

When these applications were filed, the plan was to dedicate the patents to the public, and under the Act of March 3rd, 1883, no fees are required.

It now having been suggested, however, that the patents may be assigned to the Secretary of the Interior as Trustee for the
22 public interest, it will become necessary if this is done, that the fees be paid, because the statute referred to does not provide for the waiving of the fees in such a procedure.

The power of the Secretary to accept the property in trust is under

consideration. It may be that in the end the decision will be against it and the original plan will be reverted to. Whether the fees can be returned in that event I do not undertake to say, but I think the status of the applications ought not to be left open to attack while these questions are being considered, and if the fees are paid there will be no ground of attack.

Respectfully,

THOMAS EWING,
Commissioner.

Defendant further denies that the Commissioner of Patents was without authority to accept the filing fee paid by Rittman or for him on March 15, 1915.

Defendant also denies that Rittman's application No. 11,398 was never acted on by the Patent Office except to change its date of "complete filing" from March 1 to March 15, 1915, and avers that this application was examined by the examiner and action thereon had on March 13, 1915, and that no response was made to that action.

13. Defendant denies that the "dedication" referred to in paragraph 13 of the Bill of Complaint was an irrevocable dedication but avers that under any circumstances the "dedication" under the Act of 1883 is not complete until the patent issues. He has no knowledge as to what actions Walter F. Rittman has taken with reference to his inventions.

14. Defendant admits that the plaintiff filed two applications for patent on May 19, 1913, and November 20, 1916, respectively, which were given Serial Nos. 768,618 and 132,297, but denies that
23 the former of these applications is now in interference with any application of Walter F. Rittman but on the contrary avers that while application No. 768,618 was at one time in interference with an application of Rittman that that interference was dissolved on the ground that the issue thereof was unpatentable in view of the prior art, that the claims of application No. 768,618 were rejected by the primary examiner on October 1, 1918, and that that application now stands abandoned since no response was made within one year therefrom to the office action of October 1, 1918, therein.

Defendant further admits that he rendered a decision in interference No. 39,785, as referred to in paragraph 14, but denies that by so doing the applicant, Walter F. Rittman, was accorded an "unconscionable benefit and advantage which he sought in said interference," and further avers that the record of that interference shows that the plaintiff herein took no testimony, that his filing date is subsequent to the filing date of Brooks, Bacon & Clark, another party to the interference and therefore priority could not be awarded to plaintiff whether the application of Rittman be a valid application or not.

15. Defendant avers that while in the decision referred to in paragraph 15 of the Bill of Complaint he stated that no reason was seen why Rittman could not withdraw his offer of dedication or modify its terms and that he did modify it when he filed his second application and that the dedication would not be complete until accepted

by the grant of a patent to Rittman, he also stated that if the parties were dissatisfied with the office decision the matter could be brought before the Court of Appeals in the regular course of appeals on priority. He further avers that the question involved in the interference is one of priority and that whether the dedication be in force or not, that question would have to be tried out and that if the dedication is in force the only effect would be that it would apply to application No. 29,020, to the same extent that it would have applied to the prior application but that it would in no way affect the validity of that application.

16. Defendant admits that no appeal would lie directly from his decision or order to the Court of Appeals but denies that the question involved cannot be raised hereafter, and avers that under the rulings of the Court of Appeals of the District of Columbia that is a matter which can be reviewed by that court in connection with the question of priority, if plaintiff is otherwise entitled to raise it. Defendant further avers that plaintiff has a complete and adequate remedy by said appeal and also by defense to a suit on the patent if the patent is issued to Rittman and plaintiff is sued thereon.

As a further reason why this preliminary injunction should be denied defendant avers that plaintiff was notified of the existence of the prior application of Rittman as early as September 15, 1917, when a motion to shift the burden of proof in view of that application was made and a copy of that application sent to him or his attorney. Further, that the motion was granted by the examiner of interferences on September 26, 1918; that the matter was brought before the Commissioner by petition, not by this plaintiff but by Brooks, Bacon & Clark, on March 19, 1919; that no action was taken by this plaintiff after the decision of the defendant on April 2, 1919, but that he waited until after the other parties had taken their testimony, the case had been set for final hearing on November 18, 1918, and the briefs prepared to file this Bill of Complaint.

Defendant further avers that the determination of the question whether an application for patent is a valid application and whether a patent may issue thereon are questions which it is his duty under the statute to determine and that his decisions thereon are not reviewable prior to the issuance of the patent except as found in the statute and the Act creating the Court of Appeals of the District of Columbia with reference to decisions on priority and the refusal to grant a patent.

And having fully answered said rule the defendant submits that the same should be discharged and the injunction denied.

DISTRICT OF COLUMBIA, ss:

I, James T. Newton, on oath say that I have read the foregoing return by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true, and that those stated on information and belief I believe to be true.

J. T. NEWTON,
Commissioner of Patents.

16 W. O. SNELLING VS. J. T. NEWTON, COMM'R, ETC.

26 Subscribed and sworn to before me this 20th day of November, 1919.

[SEAL.]

GEORGE H. BRADDOCK,
Notary Public, D. C.

Motion to Dismiss the Bill of Complaint.

Filed November 21, 1919.

* * * * *

Now comes the defendant, James T. Newton, Commissioner of Patents, and by protestation, not confessing or acknowledging all or any of the matters and things in the Bill of Complaint to be true in the manner and form as the same are therein set forth, doth move that said Bill of Complaint be dismissed upon and for the following reasons, among others:

1. That said Bill of Complaint contains no matter of equity whereon this Court can ground any decree or give plaintiff any relief against the defendant;

2. That it appears that the defendant has jurisdiction of the matter wherein his judgment and discretion are sought to be controlled, and is not subject to the authority of this honorable Court in respect thereto;

3. That it appears that the complainant has a plain, adequate and complete remedy otherwise than by this suit.

Wherefore, and for divers other good causes of demurrer appearing in this Bill of Complaint, the defendant prays judgment of this honorable Court whether he should be compelled to make any
27 other answer to said bill.

J. T. NEWTON,
Commissioner of Patents.

R. F. WHITEHEAD,
Of Counsel.

I hereby certify as counsel for the defendant that in my opinion the foregoing motion to dismiss is well founded in point of law and proper to be filed.

R. F. WHITEHEAD.

DISTRICT OF COLUMBIA, ss:

The defendant makes oath that the foregoing motion to dismiss is not interposed for delay.

J. T. NEWTON,
Commissioner of Patents.

Subscribed and sworn to before me this 20th day of November, 1919.

[SEAL.]

GEORGE H. BRADDOCK,
Notary Public, D. C.

28

Memorandum Opinion of Court.

Filed February 20, 1920.

* * * * *

I think that the rule as to an injunction should be discharged and the motion to dismiss the bill sustained.

JENNINGS BAILEY,
Justice.

Stipulation to Amend Return to Rule to Show Cause.

Filed February 27, 1920.

* * * * *

It is stipulated between counsel for the parties above named, that paragraph 14 of defendant's Return to Rule to Show Cause, heretofore filed herein, may be amended by adding thereto the following, to wit:

On or about December 9, 1919, Walter O. Snelling filed in the United States Patent Office his petition for revival of said application No. 768,618 with a sworn statement of facts in support thereof, and same having been considered in due course of office, it was, on the 30th day of December, 1919, by H. M. Coulston, Assistant Commissioner of Patents, found "that the petitioner had no intention of permitting the case to become abandoned; * * * that the showing made should be accepted as sufficient to justify the revival of the application on the ground that the delay in amending was unavoidable within the meaning of the statute", and it was accordingly so ordered.

McKENNEY & FLANNERY,
Attorney- for Plaintiff.
R. F. WHITEHEAD,
Attorney for Defendant.

29

Order Amending Return to Rule to Show Cause.

Filed February 27, 1920.

* * * * *

Upon consideration of the stipulation to amend the Return to Rule to Show Cause heretofore filed herein, it is this 27th day of February, A. D., 1920

Ordered that said Return to Rule to Show Cause be and same is amended by adding at the foot of paragraph 14 thereof, the following, to wit:

On or about December 9, 1919, Walter O. Snelling filed in the United States Patent Office his petition for revival of said applica-

tion No. 768,618 with a sworn statement of facts in support thereof, and same having been considered in due course of office, it was, on the 30th day of December, 1919, by H. M. Coulston, Assistant Commissioner of Patents, found "that the petitioner had no intention of permitting the case to become abandoned; * * * that the showing made should be accepted as sufficient to justify the revival of the application on the ground that the delay in amending was unavoidable within the meaning of the statute," and it was accordingly so ordered.

JENNINGS BAILEY,
Justice.

O. K.
McKENNEY & FLANNERY,
For ———.

O. K.
R. F. WHITEHEAD.

Final Decree.

Filed February 27, 1920.

* * * * *

This cause having come on to be heard upon the bill of complaint, and motion to dismiss the same, and also upon the Rule to Show cause, and defendant's Amended Return thereto, was argued orally by the attorneys for the respective parties, and submitted, and the Court being now sufficiently advised in the premises, It is, this 27th day of February, A. D., 1920, adjudged ordered and decreed

1. that the Rule to Show Cause issued pursuant to order of this Court passed on the 21st day of November 1919 be and the same is hereby discharged and for nought held, and

2. that the Bill of Complaint herein, for want of equity appearing therein, be and the same is hereby dismissed with costs against the plaintiff to be taxed

The plaintiff, Walter O. Snelling, by his attorney of record, having prayed an appeal to the Court of Appeals of the District of Columbia to review the final decree above set forth, such appeal is allowed upon the plaintiff filing bond with approved surety in the sum of One hundred dollars, or in lieu thereof upon plaintiff's depositing with the Clerk of this Court the sum of fifty dollars to cover costs which may be taxed against plaintiff by reason of the prosecution of such appeal.

JENNINGS BAILEY,
Justice.

O. K.
McK. & F.,
For Pl'ff.

O. K.
R. F. WHITEHEAD.
For D'f'd't.

31

Memorandum.

March 3, 1920.—\$50 deposited in lieu of appeal bond.

Assignments of Error.

Filed March 3, 1920.

* * * * *

1. Error on the part of the learned trial Justice in discharging the rule to show cause issued on or about the 17th day of November, 1919, and in directing the bill of complaint to be dismissed, with costs.

2. Error on the part of the learned trial Justice in passing and entering the final decree, which was entered in this cause on or about February 27, 1920.

McKENNEY & FLANNERY,
Attorneys for Plaintiff.

32

Docket Entries.

Date.	Proceedings.
1919.	Deposit toward costs by McKenney.
" Nov. 17.	Bill, appearance, order to file, & Jurat filed.
" " "	Spa to Answer & Copy issued.
" " "	Rule returnable Nov. 21" M 108 P 87 (1 copy) "
" " 18.	Spa to Answer returned served "
" " 21.	Answer of deft. to Rule & Appearance of R. F. Whitehead "
" " "	Motion of deft to dismiss "
" " "	Rule returned served deft "
" Dec. 2.	Appearance of Kay & Totten and Robson D. Brown for plff order "
1920. Feb. 20.	Memorandum opinion of Court (Bailey, J.) "
" " 27.	Stipulation "
" " "	Order amending return to rule M 108 P 518.
" " "	Bill dismissed with costs; appeal noted M 108 P. 519 "
" Mch. 3.	Docket & Index.
" " "	Amount deposited by plff in lieu of Appeal Bond.
" " "	Designation of Record on Appeal by plff & acknowledgment "
" " "	Assignment of Errors " " "

33

Designation of Record.

Filed March 3, 1920.

* * * * *

The Clerk will please prepare transcript of record in the above entitled cause, to consist of the following:

1. Bill of complaint.
2. Rule to show cause.
3. Answer of defendant to rule to show cause.
4. Motion of defendant to dismiss bill.
5. Memorandum: Argument and submission of motion to dismiss.
6. Memorandum opinion of Court per Mr. Justice Bailey.
7. Stipulation to amend answer to rule to show cause.
8. Order allowing amendment to answer to rule to show cause.
9. Final decree.
10. Memorandum: Deposit in lieu of bond to cover costs of appeal.
11. Assignments of error.
12. Docket entries.
13. This designation.

McKENNEY & FLANNERY,
Attorneys for Plaintiff.

Service of a copy of foregoing designation is acknowledged this 3d day of March, 1920.

R. F. WHITEHEAD,
Per M. H. COULSTON,
Attorney for Defendant.

34 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 33, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 37348 in Equity, wherein Walter O. Snelling is Plaintiff and James T. Newton, as Commissioner of Patents, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 24th day of March, 1920.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,

By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3380. Walter O. Snelling, appellant, vs. James T. Newton, Commissioner of Patents. Court of Appeals, District of Columbia. Filed Mar. 25, 1920. Henry W. Hodges, clerk.

